IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL MISC. NO.66644 M OF 2005

DATE OF DECISION: OCTOBER 09,2006

Mandeep Singh

.....Petitioner

VERSUS

State of Punjab and another

....Respondents

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

PRESENT: Mr. L. S. Goraya, Advocate,
for the petitioner.

Mr. J. S. Chandail, AAG, Punjab,
for the State.

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RANJIT SINGH, J.

The petitioner has filed this petition under Section 482 of the Code of Criminal Procedure, seeking quashing of the complaint dated 15.6.2001 (Annexure P-1) filed under Sections 302, 364, 291, 120-B, 34 IPC and the summoning order dated 25.9.2003 (Annexure P-2).

The complaint has been filed with the allegation that one Shamsher Singh was done to death by the petitioner alongwith some other persons. It was alleged in the complaint that Late Shamsher Singh was driver of a private bus and had developed illicit relations with one Sukhjit Kaur wife of Gur Mangal Singh. On this count, Late Shamsher Singh became friendly with Manjit Singh, brother of Sukhjit Kaur. As disclosed in the complaint, on 13.4.2001 Late Shamsher Singh was seen drinking liquor with Manjit Singh and Mandeep Singh. Around 1.00 P.M., all three had proceeded

towards Gurdaspur on a scooter and thereafter Shamsher Singh did not return. The complainant, who is father of Shamsher Singh, made enquiries from Manjit Singh about the whereabouts of his son but he did not receive any satisfactory reply. The complainant viewed that his son had been murdered by Manjit Singh and Mandeep Singh on account of illicit relations that he was having with Sukhjit Kaur, sister of Manjit Singh. The case had also been registered by the Police Station Kahnuwan on 26.4.2001 vide FIR No.56 under Sections 302, 201, 364, 34 IPC. Other details have also been disclosed, indicating the arrest of said Mandeep Singh. On the basis of this complaint filed, the petitioner and other accused named therein were summoned vide order dated 25.9.2003.

For the same very allegation, as already noticed, FIR No.56 dated 26.4.2001 had been registered on the statement made by the same complainant, Sube Singh son of Gurnam Singh, who is father of Late Shamsher Singh. The copy of the FIR has been annexed with the proceedings as Annexure P-3 and perusal thereof would show that it contains identical allegations to the one as has been made in the complaint, Annexure P-1. It has also been disclosed in this petition that Manjit Singh and Mandeep Singh both faced prosecution in above-noted FIR and after trial, have been acquitted of the charge of murder preferred against them. The copy of the judgment dated 6.12.2003 in this regard has been annexed as Annexure P-4. Though the petitioner has been acquitted by Additional Sessions Judge, Gurdaspur, yet the proceedings initiated against him on the basis of complaint, Annexure P-1, are still in progress.

The present petition has been filed by the petitioner, seeking quashing of the complaint, the summoning order and the subsequent

proceedings on the ground that the continuation of these proceedings is clearly an abuse of the process of the Court in view of the background that he had already faced a protracted trial and has been found not guilty of the same very allegations levelled against him. It is stated that the order summoning the petitioner and other co-accused suffers from the vice of double jeopardy as he has been found not guilty of the same very allegations by a Court of competent jurisdiction. It is accordingly contended that if the proceedings are allowed to continue, these would not only amount to abuse of the process of the Court but would also be unconstitutional being violative of the principle of double jeopardy as enshrined under Article 20 (2) of the Constitution of India.

Notice in this petition was issued and complainant has put in appearance through a counsel.

I have heard the learned counsel for the parties.

The counsel appearing on behalf of the complainant did not dispute the fact that on the basis of a complaint containing identical allegations by the complainant, FIR had been recorded and further that the petitioner, had faced trial and thereafter has been found not guilty of the charge of murder levelled against him by the complainant. It can be noticed that the FIR in this case has been lodged on 26.4.2001 and is pertaining to an incident that took place on 13.4.2001. The complaint, Annexure P-1, on the basis of which the petitioner and others have been summoned, was filed on 15.6.2001. The petitioner and other co-accused were summoned on 25.9.2003 for 6.12.2003. Incidentally on 6.12.2003, the petitioner was acquitted by Additional Sessions Judge, Gurdaspur. It, thus, clearly reveals that while the process of prosecuting the complaint was on and in progress,

the final judicial verdict came in the form of the judgment of Additional Sessions Judge, Gurdaspur. In view of Section 210 of Code of Criminal Procedure, criminal case and the present proceedings arising out of the complaint could have been ordered to be clubbed together. Section 210 clearly provides that when a case is instituted as a complaint case and it is made to appear to the Magistrate during the course of enquiry or trial that an investigation by the police is in progress, in relation to the offence which is subject matter of enquiry or trial held by him, then the Magistrate is required to stay such proceedings or trial and call for a report on the matter from the police officer conducting investigation. It will be of advantage to reproduce to the provisions of Section 210, which are as follows:-

> "210. ***Procedure to be followed when there is a complaint case and police investigation in respect of the same offence:-***
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> (1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.
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> (2)If a report is made by the investigating police officer under Section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the

police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code."

It appears obvious that the present proceedings are in progress against the petitioner on a complaint filed by respondent No.2 because the verdict of acquittal of the petitioners had not been returned when the Magistrate issued the process of summoning the petitioner. In the complaint as well as in the order passed by the Magistrate, a mention has been made to the FIR lodged in this case. At present the petitioner, who has already earned an acquittal after a proper trial, is now faced with the present proceedings on the basis of the complaint for same allegations.

Can these proceedings be allowed to continue against the petitioner in view of the factual and legal position noticed above. The judgment given by learned Additional Sessions Judge, Gurdaspur, clearly brings out that complainant had made an attempt to seek stay of pronouncement of the judgment in criminal case on the ground that proceedings in a complaint filed by him were pending before the Magistrate and that the accused had been summoned therein. Additional Sessions Judge, however, declined the prayer of the complainant on the ground that if such a course is allowed, then no criminal Court would be able to proceed with the trial of any case. He also noticed that on 26.4.2001, the day FIR was registered, the complaint case was not pending. Accordingly,

Additional Sessions Judge proceeded ahead to decide the case and result was acquittal of the petitioner of the charge levelled against him. It is, thus, obvious that the complainant was prosecuting the petitioner by way of complaint as well as police report and was conscious that the outcome in the criminal trial on the basis of FIR was bound to effect the proceedings in the complaint case. It cannot be denied that the nature of offence in both the cases i.e. the complaint as well as FIR case is identical and so are the allegations. Even if some additional evidence or fact was to be revealed, it could have easily been done by way of additional evidence before the Court conducting criminal proceedings pursuant to the FIR, rather than filing a complaint and processing a parallel prosecution against the petitioner. The complainant, who had appeared as witness in FIR case, would not have any additional fact to state in the complaint case. There would also be no additional material with him to produce in the complaint case. Analogy can be drawn from P.S.Rajya Vs. State of Bihar, 1996 (3) RCR 261, where even on exoneration in departmental proceedings, criminal case was ordered to be quashed on the ground that department will not have anything new or additional to state before the Criminal Court. Prosecution had examined 14 witnesses in FIR case and does not seem to be having any grievance that it was not allowed to examine any witness, which it required. Even otherwise the petitioner has faced a full-fledged criminal trial and has thereafter earned acquittal. It would, in my view, amount to abuse of process of the court if the proceedings in the complaint case concerning the same very allegations are allowed to continue.

Though not pleaded in the petition but Section 300 Cr.P.C. may also come to the rescue of the petitioner in this case. This Section provides

that person once convicted or acquitted is not to be tried for the same offence. Section 300 is reproduced below:-

> "300. *Person once convicted or acquitted not to be tried for same offence.*-
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> (1)A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of Section 221, or for which he might have been convicted under sub-section (2) thereof.
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> (2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State government for any distinct offence for which a separate charge might have been made against him at the former trial under sub-section (1) of Section 220.
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> (3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened or were not known to the Court to have happened, at the time when he was convicted.
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> (4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or

conviction be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) A person discharged under Section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first-mentioned Court is subordinate.

(6) Nothing in this Section shall affect the provisions of Section 26 of the General Clauses Act, 1897 (10 of 1897) or of Section 188 of this Code."

This Section recognises a basic fundamental principle that a man is not to be prosecuted twice for the same crime. The governing principles in this regard are that a man cannot be tried for a crime in respect of which he has previously been acquitted or convicted. For the applicability of this principle known as "Rule of autrefois acquit", three essential conditions are required to be satisfied, as held by the Supreme Court in Mahmood Vs. State of Uttar Pradesh, AIR 1976 Supreme Court 69. These are (i) there must have been a trial of the accused for the offence charged against him; (ii) the trial must have by a Court of competent jurisdiction and (iii) there must have been a judgement or order of acquittal. When these three conditions are satisfied, subsequent trial of accused can successfully be resisted by him on the plea of `autrefois acquit'. This Section is comparable to Clause (2) of Article 20 of the Constitution of India, which also provides that no person shall be prosecuted and punished for the same

offence more than once. Both the provisions enact the well known principle of criminal jurisprudence that no one should be put in jeopardy twice for the same offence. Section 300 has been considered and found wider in scope than Article 20(2) of the Constitution of India inasmuch as the identity of the prosecutor in previous trial is not required to be the same as that in the subsequent prosecution. The principle under this Section does not rest on any doctrine of estoppel but on grounds of `public policy'. This rule applies even if the previous case was instituted by a police challan and the second one by a private complaint and hence, the complainant may not have been party to the previous decision. It has also been held that even though the plea of autrefois acquit may not be strictly available to the accused in a particular case, he may still be entitled to invoke the inherent powers of the Court under Section 482 Cr.P.C. for quashing the subsequent trial, which is an abuse of the process of Court. In this regard, reference can be made to Gulab Chand Sharma Vs. H.P.Sharma, Commissioner of Income-tax, Delhi, 1975 Tax. L.R. 17. It is, thus, clear that where person has earned an acquittal after a proper trial and he is sought to be prosecuted again for the same offence, even though on a private complaint, Section 300 Cr.P.C. would stand to protect him. The facts in the present case, as already noticed, clearly revealed that the petitioner in this case had faced full-fledged trial and was found not guilty of the same offence, of which he is now sought to be prosecuted on a complaint filed by Suba Singh, respondent No.2. It may also need a notice that complainant was fully represented before the Court trying the petitioner on a police challan. So, it cannot be said that he was in any manner unrepresented, which could make him entitled to bring out something in addition to what has already been on record. It may also be

noticed that the complainant would not be without any remedy. If he feels aggrieved against the verdict given in the FIR case, he still can approach the higher forum against the same. So far no grievance appears to have been made as far as finding in the FIR case is concerned. It can be noticed that the complainant was fully represented in the FIR case as well and counsel appearing on his behalf had made detailed submissions before the Court which have been noticed and dealt with.

Accordingly, the present proceedings pursuant to the complaint filed, cannot be allowed to continue being abuse of the process of the Court. The complaint, summoning order and the subsequent proceedings qua the petitioner, therefore, deserves to be quashed and it is ordered accordingly.

The present petition is accordingly allowed.

October 09, 2006 **(RANJIT SINGH)**
khurmi **JUDGE**